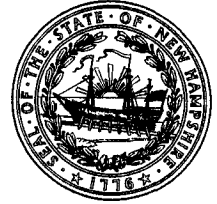




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

June 28, 2005

Charles Whitehead  
33 Underwood Road  
Hubbardston, MA 01452

Re: Docket No. AF 03-001 Motion to Accept Settlement Agreement

Dear Mr. Whitehead:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Director of the Water Division, and accepted by Commissioner Michael P. Nolin on June 27, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**

Michael P. Sclafani,  
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Ana Ford, DES WD

Charles Whitehead  
33 Underwood Road  
Hubbardston, MA 01452

Re: Route 12A, Cornish, New Hampshire  
Wetlands Bureau File No. 2000-424

**ADMINISTRATIVE FINE  
No. AF 03-001**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Water Division (the "Division") and Charles Whitehead, parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain, erosion control and timber harvesting through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Pursuant to RSA 485-A:17, III and Env-Ws 415.04, timber harvesting permits are granted by completing the New Hampshire Department of Revenue Administration's Notice of Intent to Cut Wood or Timber form ("Intent to Cut").
3. RSA 227 -J :7, the forest management statute, states "that [p]ursuant to RSA 485- A: 17, any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create unnatural runoff shall comply with the provisions of RSA 485-A. Failure to comply with these requirements may result in penalties under RSA 485-A."
4. Charles Whitehead is the owner of land located in the town of Cornish, more particularly identified on the Town of Cornish Tax Map 3 as Lot 29 (the "Property").
5. On January 2, 2000 Charles Whitehead signed an Intent to Cut for timber harvesting activities on the Property. The Intent to Cut was filed with the Town of Cornish. The Notice identified Andrew Pysz as the logger for the forestry operations to be performed on the Property.
6. By Notice of Proposed Administrative Fine and Hearing Docket No. AF 03-001 dated January 15, 2003 ("Notice"), the Division proposed that an administrative fine totaling \$21,500 be imposed against Charles Whitehead for alleged violations of RSA 485-A:17.
7. Specifically, the Notice proposed administrative fines totaling \$1,500 for violating RSA 485-A:17 by failing to follow Best Management Practices for Erosion Control and failing to install erosion control measures during forest management activities on the Property, and administrative fines totaling \$20,000 for Mr. Whitehead's failure to comply with Administrative Order No. WD

02-09, dated February 20, 2002 ("Order"), issued by DES to Mr. Whitehead.

8. In order to settle this matter, the Division and Charles Whitehead have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the total \$21,500 fine proposed in the Notice, the Division agrees to waive \$20,500 based on Mr. Whitehead's explanation of the circumstances surrounding his failure to immediately comply with the Order and his good faith efforts to remediate the Property by contracting with the Natural Resources Conservation Service ("NRCS") as part of a cost-share grant through the U.S. Department of Agriculture, Environmental Quality Incentive ("USDA/EQI").

10. Charles Whitehead agrees to pay the remaining \$1,000 upon his execution of the Agreement.

11. Improvements to the site of the alleged violations will continue to be monitored. A failure to complete the repairs contracted for through the NRCS will be considered a breach of this Agreement which shall result in an additional \$8,000 becoming immediately due and payable by Mr. Whitehead to DES. Payment of any additional amount pursuant to this paragraph shall be in addition to finishing all work necessary to stabilize and restore the Property as described in the grant agreement with NRCS and USDA/EQI.

12. Payments due under paragraph #10 and any payments that become due under paragraph #11 will be made by certified check made payable to: "Treasurer, State of New Hampshire" and will be mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

13. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission of liability by the respondent; (ii) an admission by the respondent or evidence that he violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense the respondent might raise in any third party proceeding.

By executing this Agreement, the respondent waives his right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

Charles Whitehead shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of the respondent and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

14. The effective date of this Agreement will be the date on which it is signed by Charles Whitehead and the Director of the Water Division and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both

parties and the Commissioner. Any such amendment will become effective on the date upon which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.


WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,


6/18/05  
Date

  
Charles Whitehead

6/27/05  
Date

DES Water Division  
  
Harry T. Stewart, P.E., Director

This Motion to Accept Settlement Agreement is granted this 27<sup>th</sup> day of June, 2005.

  
Michael P. Nolin, Commissioner  
Department of Environmental Services